

108 KAR 1:010. Board operation and claim procedure.

RELATES TO: KRS 44.070, 44.080, 44.086, 44.090, 44.110

STATUTORY AUTHORITY: KRS 44.080

NECESSITY, FUNCTION, AND CONFORMITY: KRS 44.080 requires the Board of Claims to establish rules for its government and for the regulation of the method of pleading and practice before it. This administrative regulation establishes the procedures for claims and operation of the board.

Section 1. Meetings. (1) Pursuant to KRS 44.080, the board shall conduct special sessions in each month that it does not meet for a regular session if necessary to expedite the business of the board. A special session of the board may be called by the chairman or a majority of the board.

(2) Three (3) members of the board shall constitute a quorum.

(3) The Executive Director of the Board of Claims or designee of the executive director shall order the submission of briefs, assign claims to a hearing officer, notify parties of the time and place of hearings, and issue other orders directed by the board.

Section 2. Filing of Claims; Response to Claims. (1) A claim shall:

(a) Be legibly written, typed, or printed;

(b) Contain:

1. The name and address of the claimant;

2. The amount of the claim; and

3. A statement of the facts that:

a. Allege negligence on the part of the Commonwealth; and

b. Is sufficiently clear to:

(i) Show that the claimant is entitled to relief under KRS 44.070 to 44.165; and

(ii) Enable the defendant to investigate the claim and prepare its defense; and

(c) Be mailed or delivered to the Board of Claims office in Frankfort, Kentucky.

(2) A claim shall be brought by:

(a) The claimant;

(b) An attorney acting on the claimant's behalf; or

(c) A legal representative as required by KRS 44.110(5) if the legal representative does not engage in the unauthorized practice of law.

(3) An attorney who commences with representation of a claimant before the board shall enter an appearance into the record of the claim for purposes of service of process, including any orders relative to the claim. The original entry of appearance shall be filed with the board and copies shall be served on the opposing party and the hearing officer presiding over the claim.

(4) The executive director or designee of the executive director shall promptly furnish a copy of each claim to the head of the affected agency.

(5) The agency against which a claim has been filed shall answer the charges in writing to the board and the claimant within thirty (30) days.

(6) Claims not requiring a hearing under KRS 44.086(3).

(a) A claim that does not require a hearing under KRS 44.086(3) shall be investigated by the administrative staff of the board.

(b) The board or a board member assigned by the chairman shall issue the order or award in accordance with KRS 44.086(5). The final submission date shall be calculated as thirty (30) days from the date the answer is due from the agency.

(c) An aggrieved party may request that the full board review the claim pursuant to KRS 44.086(6).

(7) If the Attorney General wishes to enter the matter, he shall file a response with the board.

(8) The executive director or designee of the executive director shall submit the claim to the board at its next regular or special session meeting if:

(a) The response filed by the affected agency admits liability; or

(b) The affected agency fails to respond to the board concerning its investigation within thirty (30) days.

(9) If the response filed by the affected agency denies negligence in a claim requiring a hearing pursuant to KRS 44.086(3), the executive director or designee of the executive director shall assign the claim to a hearing officer and shall notify the claimant and the head of the affected agency (or their attorneys) of the assignment.

(10) An extension of time to file the answer or otherwise file a response to the claim shall be granted:

(a) On agreement of the parties; or

(b) Upon a showing of good cause.

Section 3. Prehearing or Status Conference - Hearings - and Recommended Orders. (1) Prehearing or status conference.

(a) The hearing officer shall schedule a telephonic prehearing or status conference:

1. Within sixty (60) days of the assignment of the claim; and

2. Upon reasonable notice to all parties.

(b) The hearing officer shall convene the telephonic prehearing or status conference, or order the affected state agency to convene the conference.

(c) A prehearing or status conference shall be used to discuss jurisdictional matters, settlement possibilities, discovery, preparation of stipulations, clarification of issues, rulings on witnesses, taking of evidence, issuance of subpoenas, and other matters that will promote the orderly and prompt conduct of the hearing.

(d) The hearing officer and the parties shall set an agreed date for the hearing at the prehearing or status conference. If the hearing officer and parties cannot agree upon a hearing date, the hearing officer shall set the matter for hearing no later than six (6) months from the date of the conference, unless the parties have otherwise agreed to have the board hold the claim in abeyance.

(e) Upon conclusion of the prehearing or status conference, the hearing officer shall issue a prehearing or status conference order incorporating all matters determined at the prehearing or status conference.

(f) Upon the agreement of the parties and the hearing officer on the date and time for the hearing, the hearing officer shall notify the executive director or the designee of the executive director. The executive director, or his designee, shall:

1. Reserve a place within the proper venue to conduct the hearing;

2. Select a court reporter to be present at the hearing to record the proceedings; and

3. Notify the parties and the court reporter of the date, time, and place of the hearing.

(2) Filings.

(a) At appropriate stages of the proceedings, the board or hearing officer:

1. Shall give all parties opportunity to file pleadings, motions, objections, and offers of settlement; and

2. May give all parties opportunity to file briefs, proposed findings of fact and conclusions of law, and proposed recommended or final orders.

(b) An extension of time to file a pleading, motion, brief, proposed finding of fact or conclusion of law shall be granted:

1. On agreement of the parties; or

2. Upon a showing of good cause.

(c) Filing deadlines.

1. If the opposing party wants to respond to a motion, the response shall be filed within thirty (30) days of the date the motion was filed.

2.a. If a response was not filed within thirty (30) days, the board or hearing officer shall issue an order on the motion within sixty (60) days of the date the response was due.

b. Except as provided by subparagraph 3 of this paragraph, if a response was filed, the board or hearing officer shall issue its order within sixty (60) days of the date the response was filed.

3. If the motioning party wants to reply to the response, the reply shall be filed within ten (10) days of the date the response was filed. The board or hearing officer shall issue its order within sixty (60) days of the date the reply was filed.

(d) The original of all filings shall be mailed to the board. A copy of each filing shall be served on all parties and the hearing officer by mail or personal service by the party filing the item.

(3) A party may request that the board issue a subpoena, pursuant to KRS 44.080. The subpoena shall be issued by the board or a board member and be served upon the witness by a sheriff or other person authorized by law to serve process. A copy of the subpoena that reflects actual service shall be filed with the board and the hearing officer to whom the claim is assigned.

(4) Any party shall have the right to inspect, at least five (5) days prior to the hearing, a list of all witnesses each party expects to call at the hearing, and the available documentary or tangible evidence relating to the hearing, either in person or by counsel.

(5) A hearing shall be:

(a) Open to the public;

(b) Recorded by a court reporter; and

(c) Conducted by a hearing officer. The hearing officer shall:

1. Preside over the conduct of the hearing; and

2. Regulate the course of proceedings in:

a. A manner which will promote the orderly and prompt conduct of the hearing; and

b. Conformity with the prehearing or status conference order.

(6) The proof required to support a claim shall be that required to support a claim in any court of competent jurisdiction in this Commonwealth.

(7) All testimony and proof shall be presented at the hearing before the hearing officer by all parties. The board, on oral motion at the hearing or on written motion thereafter, shall permit further proof within thirty (30) days following the hearing.

(8) All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party and shall be noted and made a part of the record.

(9) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(10) Any claimant desiring to submit medical or other expert testimony shall be granted thirty (30) days after the hearing to do so and the defendant shall be granted forty-five (45) days thereafter to complete its proof. For good cause, these times may be extended by the board.

(11) The hearing officer may take official notice of facts, which are not in dispute, or of generally-recognized technical or scientific facts within the affected state agency's specialized knowledge. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.

(12) If the claimant fails to appear at a scheduled hearing, prehearing or status conference, or any other proceeding, of which he has notice, the hearing officer presiding over the claim shall issue an order for the claimant to show good cause for the failure to appear at the hearing within ten (10) days from the date of the show cause order. If the claimant fails to respond or show good cause for the failure to appear at the hearing, the board may order the claim dismissed. If the af-

affected state agency fails to appear at the hearing, the hearing officer may take the testimony of any witnesses present or may recommend that a default order be issued against the affected state agency.

(13) Findings of fact shall be based exclusively on the evidence on the record. The hearing officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, if it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs, but it shall not be sufficient in itself to support the recommended findings of facts of the hearing officer or the final order of the board, unless it would be admissible over objections in civil actions.

(14) A hearing officer shall not communicate off the record with any party to the hearing regarding any issue that is a part of a matter assigned to the hearing officer.

(15) If the parties desire to submit briefs after completion of the hearing, the hearing officer shall issue an order setting forth the timetable for brief submission.

(a) The order shall require that briefs be submitted:

1. Separately, with:

a. The claimant's brief due thirty (30) days after the completion of hearing;

b. The defendant's response brief due thirty (30) days after the claimant's brief is submitted; and

c. The claimant's rebuttal brief, if desired, due five (5) days after the defendant's response brief is submitted; or

2. Simultaneously, with:

a. The briefs of the claimant and the defendant due thirty (30) days after completion of the hearing; and

b. Rebuttal briefs, if desired, due five (5) days after the opposing party's brief is submitted.

(b) If a transcript of the hearing is necessary to complete a brief, the parties and hearing officer shall stipulate to the commencement of the time periods within which to file briefs.

(16) Recommended orders.

(a) The hearing officer shall complete and submit to the board a written recommended order which shall include his findings of fact, conclusion of law, and recommended disposition of the hearing within thirty (30) days after the record is completed or a longer period upon agreement of the parties involved.

(b) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the board, the hearing officer shall show good cause to the board, in writing, and based upon substantial proof, that an extension of time is needed and shall state the period of time requested.

(c) If issued, an order by the board granting the extension shall be served on the parties and included in the record of the hearing.

(d) The board shall send a copy of the hearing officer's recommended order to each party in the hearing by regular mail to the last known address of each party.

(e) Each party shall have fifteen (15) days from the date the recommended order is mailed within which to file exceptions to the recommendations with the board. An extension of time to file exceptions shall be granted upon:

1. Agreement of the parties; or

2. A showing of good cause.

Section 4. Board Decision. (1)(a) Each claim shall be submitted to the board at its next regular or special session meeting following the submission of the recommended order.

(b) The board shall issue its final order in accordance with KRS 44.086(5).

(c) If the board remands the claim to the hearing officer, the hearing officer shall have thirty (30) days to render a recommendation to the board, unless an extension of time is required by further proceedings at the request of the hearing officer or the parties to the proceeding.

(d) The stated deadlines within which the board shall render a final order shall commence upon the last filing of any exceptions to the recommendation.

(2) The board, or a majority of its members, shall render a decision on each claim requiring a hearing pursuant to KRS 44.086(3) or subject to full board review at a board meeting.

(3) In rendering the final order, the board shall consider the record including the recommended order and any exceptions duly filed to the recommended order.

(4) The board may accept the recommended order of the hearing officer and adopt it as the final order of the board, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings as appropriate.

(5) If the final order differs from the recommended order, it shall include separate statements of findings of fact and conclusions of law. The final order shall also include the date the board rendered the order, the date it was served on the parties, and to whom it was served, and a statement advising the parties fully of available appeal rights.

(6) Unless waived by the party, a copy of the final order shall be transmitted to each party or to his attorney of record.

(7) Regardless of the amount of a claim, the matter shall be deemed finally adjudicated if the claim has been the subject of full board review. (3 Ky.R. 674; eff. 5-4-77; Am. 4 Ky.R. 320; eff. 5-3-78; 8 Ky.R. 6; 1248; 259; eff. 8-5-81; 9 Ky.R. 730; eff. 1-6-83; 15 Ky.R. 2415; eff. 7-12-89; 19 Ky.R. 787; 1094; 1531; eff. 1-4-93; 28 Ky.R. 2636; 29 Ky.R. 427; eff. 8-12-2002.)